



THE STATE BAR OF CALIFORNIA

Committee on Legal Professionals with Disabilities



**I Have A Disability.  
What Are My  
Employment Rights  
Under the California Fair  
& Employment  
Housing Act?**

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The purpose of this booklet is to provide general information on the law, which is subject to change, and is not intended to provide legal advice. If you have a specific legal problem, you may want to contact a lawyer.

For additional copies of this brochure: Call 415-538-2328 or email at [programdevelopment@calbar.ca.gov](mailto:programdevelopment@calbar.ca.gov)



*The State Bar  
of California*

Office of Legal Services,  
Access & Fairness Programs

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# I have a disability. What are my employment rights under the California Fair Employment & Housing Act?

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## >> What is the California Fair Employment & Housing Act (FEHA)?

For many people with disabilities, such everyday activities as working, using public transportation, and visiting stores, restaurants and public facilities present substantial difficulties, not just mere inconveniences.

In 1974, California first passed FEHA. FEHA, which was last amended in 2004, is a civil rights law that prohibits employment discrimination and harassment based on a person's disability or perceived disability. FEHA also requires employers to reasonably accommodate individuals with medical conditions, mental or physical disabilities unless the employer can show that to do so would cause undue hardship.

The laws of this state in the area of disabilities provide protections independent from those provided under the federal law, the Americans with Disabilities Act (ADA) of 1990. In fact, California has always afforded additional protections, even prior to the passage of the federal act. The laws in this state contain broader definitions of physical and mental disability as well as other medical conditions.

## >> What is the difference between the ADA and FEHA?

FEHA provides broader protections for persons with disabilities than the ADA. California employers with five or more employees must follow FEHA. Under FEHA, a disability must only "limit" a major life activity. The disability does not have to involve a "substantial" limitation as required by the ADA. FEHA defines disability as an impairment that makes performance of a major life activity "difficult."



Whether a medical condition or disability “limits” a major life activity is determined regardless of any mitigating measure, such as medication, prosthesis, etc., unless the mitigating measure itself limits a major life activity.

In addition, California employers are required to engage in an interactive process in assessing the request for a reasonable accommodation. (See question 5 for more information on the interactive process.)

## >> What does FEHA say about employment of people with disabilities?

California disability laws are intended to allow persons with disabilities the opportunity for employment. FEHA generally requires two things of employers.

Those requirements are:

- Employers must provide reasonable accommodation for those applicants and employees who, because of their disability, are unable to perform the essential functions of their job.
- Employers must engage in a timely, good faith interactive process with applicants or employees in need of reasonable accommodation.

### Covered Entities

It is illegal for a “covered entity” to engage in job discrimination against people with disabilities.

Such “covered entities” include:

- Private employers
- State and local governments
- Employment agencies
- Labor organizations and labor-management committees

## Disability

The term "disability" refers to any one of the following:

- A physical or mental impairment that limits one or more of the major life activities
- A record of such an impairment
- Being perceived as having such impairment even when no limitations exist

FEHA does not target any one specific disability. Physical and mental disabilities may include, but are not limited to: deafness and hearing impairments, blindness and vision impairments, acquired brain disabilities and speech, learning and psychological disabilities, emotional or mental illness, physical and systemic disabilities, including AIDS/HIV, genetic characteristics, cosmetic disfigurement, anatomical loss, cancer, medical condition, or having a record or history of a disease, disorder or condition, and/or being perceived or treated as having had any of the above conditions, among others.

The following are not considered disabilities under California law: sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

Impairment. An impairment is one that makes a major life activity more difficult than it is for most people or for the average person. Major life activities include hearing, seeing, speaking, walking, breathing, performing manual tasks, caring for oneself, learning, reproduction and working. And this is by no means a complete list.



## >> Who is a "qualified individual with a disability" under FEHA?

An individual with a disability is a person who, with or without reasonable accommodation, can perform the essential functions of the employment position. Under FEHA, one qualifies for disabled status if they have either a physical or mental condition that limits a major life activity such as working.

Essential functions are the fundamental job duties that you must be able to perform on your own or with the help of a reasonable accommodation. The duties are basic and necessary to the position.

## >> What is "reasonable accommodation"?

Reasonable accommodation is any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to do one of the following:

- Participate in the job application process
- Perform the essential functions of a job
- Enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities.

Reasonable accommodations may include:

- Making the workplace readily accessible to and usable by people with disabilities
- Providing or modifying equipment or devices
- Job restructuring, part-time or modified work schedules, or reassignment to a vacant position
- Adjusting or modifying examinations, training materials, or policies
- Providing readers and interpreters

In the process of determining a reasonable accommodation, an employer must enter into a good faith, interactive process to determine if there is a reasonable accommodation that would allow the applicant or employee to obtain or maintain employment. The first step in this “interactive process” is the determination of the “essential functions” of the job. Then, the employer should consult with the individual to ascertain how the employee is limited relative to the essential functions of the job and discuss ways to overcome these limitations with a reasonable accommodation.

## Limitations to Providing Accommodations

An employer is not required to provide a reasonable accommodation to a qualified applicant or an employee with a disability if the accommodation would be an undue hardship.

### >> What is "undue hardship"?

An accommodation may be an undue hardship if it is extremely costly, extensive, substantial or disruptive, or causes a fundamental change in the goods or services provided by the employer.

Factors in determining an undue hardship include:

- The nature and cost of the accommodation
- The resources and size of the business as a whole and of the facility making the accommodation
- The type of business operation, including the composition, functions and structure of the workforce
- The impact that the accommodation would have on the facility and on the business as a whole

## >> Can an employer refuse to hire me because my disability would pose a threat to the safety of others?

FEHA permits an employer to refuse to hire an individual if s/he poses a direct threat to the health or safety of her/himself or others in performing the duties of that position.

A direct threat means that your handling of the job would cause serious harm to yourself or others. For that reason, it would be unsafe to allow you to be in that job. This determination must be based on objective, factual evidence.

## >> Can an employer ask about my disability before hiring me?

It is unlawful for an employer to ask you if you have a disability, or to ask about the nature or severity of your disability, prior to hiring you. Once you are offered a job, the employer may ask about your physical and mental ability to perform the essential functions of the job – provided that the employer asks the same questions of all prospective employees.

### Medical Examination

An employer cannot require you to take a medical examination before you are offered a job. However, an employer may make a job offer conditional upon your passing a required medical examination, but only if all entering employees for that job category have to take the examination. If a post-job offer medical examination reveals that you have a disability, the employer may ask you to describe or demonstrate how you would do the job, with or without an accommodation.

If a medical examination taken after you are offered a job shows that you have a disability, an employer may refuse to hire you only if the reasons for rejection are job-related and necessary for the operation of the employer's business. In general, this means an employer can withdraw a job offer only if it is not possible to accommodate your disability or if your disability would result in a safety hazard to you or to others.

## Confidentiality

An employer must keep the results of all your medical examinations and inquiries about a disability confidential. The employer must also maintain these medical records and other records of disability separately in files with restricted access.

### >> **Who can I contact if I suffer employment-related discrimination because of my disability?**

In California, the California Department of Fair Employment and Housing (DFEH) enforces the California civil rights laws against disability discrimination. DFEH has a website at [www.dfeh.ca.gov](http://www.dfeh.ca.gov). You can call DFEH toll free at (800) 884-1684. The TTY number is (800) 700-2320.

If you believe that you have been the victim of a discriminatory policy or act prohibited by the ADA, you should contact the Equal Employment Opportunity Commission (EEOC) in your local area. You may also file a private lawsuit, but only after obtaining a right-to-sue letter from EEOC. EEOC has a website at [www.eeoc.gov](http://www.eeoc.gov). The toll free number to call is (800) 669-4000. The TTY number is (800) 669-6820.

Because there are deadlines for filing discrimination complaints, you should not delay seeking help if you have reason to believe that you may be a victim of illegal discrimination. Delay in filing a claim may result in dismissal of your case. In addition to DFEH and EEOC, there are many organizations that offer free or low cost legal advice to possible discrimination victims. Check your yellow pages under "Social Services" for such service or consult an employment law attorney.

## >> How do I get legal advice?

If you need legal advice on FEHA, call an attorney. If you do not have an attorney or do not know of one, obtain referrals from someone whose judgment you can trust – a friend, co-worker, employer or business associate. Or call a State Bar-certified lawyer referral service in your area. To locate such a service, call the State Bar toll free number at 1-866-442-2529 (for calls from out of state, dial 1-415-538-2250). Information will be provided in both English and Spanish. Also, you can look in the Yellow Pages of your telephone directory under “Attorney Referral Service” or call your local bar association. For an online list of certified referral services, visit the State Bar’s website at [www.calbar.ca.gov](http://www.calbar.ca.gov).

State Bar-certified lawyer referral services seek to find the right lawyer for your particular problem. Most of these services offer half-hour consultations for a modest fee. All certified lawyer referral services have been approved by the State Bar of California and meet certain standards adopted by the California Supreme Court. Lawyer referral service fees vary. Don’t forget to ask whether there is a fee for the referral or initial consultation. And if you decide to hire a lawyer, make sure that you understand what you will be paying for, how much it will cost and when you will be expected to pay your bill. You may want to talk to several attorneys before you hire one.

What if you do not have enough money to pay for legal advice? You may belong to a “legal insurance” plan that covers these kinds of services. Or, if your income is low, you may qualify for free or low-cost legal help. Check the white pages of your telephone directory for a legal services program, such as a legal aid society, in your area. Or find out if the certified lawyer referral service offers such assistance or if it can refer you to a legal services program. Online access to legal services programs can be obtained at: [www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)

*For more information, see the State Bar pamphlets on How Can I Find and Hire the Right Lawyer? And What Can a Lawyer Referral Service Do For Me? To obtain complimentary copies of these pamphlets and other State Bar consumer education pamphlets, call 415-538-2280. Or visit the State Bar’s website—[www.calbar.ca.gov](http://www.calbar.ca.gov)—where you’ll find the consumer education pamphlets, as well as information on ordering them. The pamphlets also can be ordered in bulk.*

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